

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:1:MAN:1:PostF-163826-01
DAGlasel

date: 1-17-02

to: SB/SE Estate and Gift Tax Territory 1
Area 2, Group 2
Attn: Estate and Gift Tax Attorney, Maria Glaser

from: Area Counsel
(Small Business/Self-Employed:Area 1)

subject: Estate of [REDACTED]

SSN: [REDACTED]

This memorandum is in response to your request for advice regarding the adjustment to the value of a gift below the amount of the unified credit. **This memorandum should not be cited as precedent.**

ISSUE

Whether a notice should be issued pursuant to I.R.C. § 2001 to adjust the value of a gift which, after the adjustment, remains below the unified credit? If yes, what type of notice should be issued?

CONCLUSION

A Notice of Final Determination should be issued with respect to the gift tax. With respect to the estate tax a Statutory Notice of Deficiency should be issued.

STATEMENT OF FACTS

[REDACTED] made a total of six gifts (three to each daughter) on [REDACTED] and [REDACTED] that he reported on a Federal Gift Tax Return ("Form 709"). [REDACTED] died on [REDACTED]. The total value of the gifts reported to each of his two daughters (representing interests in three closely held businesses) were \$[REDACTED]. (\$[REDACTED], \$[REDACTED], \$[REDACTED] to each daughter). The total value of those gifts, \$[REDACTED], did not exceed the unified credit:

IRS Estate and Gift Tax Attorney Maria Glaser examined [REDACTED]'s Form 709 (filed [REDACTED]) and his Estate's Federal

Estate Tax Return ("Form 706") (filed [REDACTED]). The IRS determined that the gifts reported on the Form 709 were undervalued. The IRS determined the total value of the interests gifted to [REDACTED]'s daughters was \$ [REDACTED] (\$ [REDACTED], \$ [REDACTED], respectively). However, even with these adjustments recommended by the IRS, no gift tax is due because the adjusted value of the gifts does not exceed the unified credit.

Ms. Glaser examined the Form 706, including the adjusted value of the gifts and found there was an estate tax due. The Form 706 included adjusted taxable gifts on line 4 of the Form 706 based on the valuation reported on the Form 709 of \$ [REDACTED]. To determine the correct estate tax the adjusted taxable gifts reported on line 4 of the Form 706 must be increased to \$ [REDACTED], to account for the undervaluation found on the Form 709.

LEGAL ANALYSIS

I.R.C. § 2001(b) provides that a tentative tax shall be imposed on the amount of the taxable estate, and the amount of the adjusted taxable gifts. Further, Treas. Reg. § 20.2001-1(b) provides that all gifts made after August 5, 1997 and reported on a gift tax return, may not be adjusted after the time has expired for assessment of a gift tax under I.R.C. § 6501

Furthermore, Treas. Reg. § 20.2001-1(c)(1) provides that the amount of a taxable gift as finally determined for gift tax purposes is the amount of the taxable gift as shown on a gift tax return if the IRS does not contest such amount before the time has expired under section 6501 within which gift taxes may be assessed. Therefore, in order to contest the value of the gifts in connection with an audit of a Form 706, we must contest the amount of the gift shown on the Form 709 prior to the expiration of the statute of limitation.

I.R.C. § 7477(a) provides a procedure for the IRS to contest the value of a gift reported on a Form 709 even if no deficiency will result because of the application of the unified credit. The IRS may issue a Notice of Final Determination. I.R.C. § 7477(b)(3). I.R.C. § 7477(a) also provides a procedure for the taxpayer to contest such a determination of a different value of the gift by the IRS. The taxpayer may challenge the valuation determined in the Notice of Final Determination by filing a petition with the Tax Court within 90 days of the date the notice was mailed by the IRS. However, the Tax Court shall not issue a declaratory judgment or decree unless it determines that petitioner has exhausted all available administrative remedies

within the IRS.

Thus, as soon as all administrative remedies are exhausted a Notice of Final Determination may be issued. After the Notice of Final Determination is issued, a Statutory Notice of Deficiency for estate taxes may be issued based on the adjusted value of the gifts asserted in the Notice of Final Determination.

The statute of limitations on assessment of gift tax is three years from the filing of the Form 709 where such gift is disclosed on the return or in a statement attached to such return in a manner adequate to apprise the Secretary of the nature of such item. I.R.C. § 6501. Thus, if the I.R.S. fails to issue a Notice of Final Determination within three years from the filing of the relevant Form 709 (March 1, 2002), the value listed on such return will govern the value of the adjusted taxable gifts on the Form 706.

If you have any further questions regarding this matter, please call Donald Glasel at (212) 436-1833.

This writing may contain privileged information. any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

LINDA R. DETTERY
Area Counsel
(Small Business/Self-Employed:Area 1)

By: _____
DONALD A. GLASEL
Attorney (SBSE)